

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

**MAIL CONTRACTORS OF AMERICA, INC.
Employer¹**

and

**EDWARD FELKS
Petitioner**

and

Case 26-RD-1144

**AMERICAN POSTAL WORKERS UNION,
MEMPHIS AREA LOCAL
Union**

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Mail Contractors of America, Inc., is an Arkansas corporation with a terminal located in West Memphis, Arkansas, where it is engaged in the transportation of mail for the United States Postal Service. The Union, American Postal Workers Union, Memphis Area Local, has represented the full-time and extra board drivers domiciled at the West Memphis facility since at least 2000. The Petitioner filed a petition under Section 9(c) seeking decertification of the Union.

A hearing was held before a hearing officer of the National Labor Relations Board on January 29, 2007. A representative of the Union attended, but did not participate in the hearing. David Bachman, the Employer's Senior

Vice-President and General Counsel, was the only witness. No litigable issues were presented during the hearing and the parties did not file briefs.

As of December 15, 2007, there were approximately 58 employees in the unit represented by the Union. The unit, as described in the parties' collective-bargaining agreement, includes all full-time and extra board drivers domiciled at the Employer's West Memphis, Arkansas facility and excludes all office clerical employees, mechanics, casual and seasonal drivers, guards and supervisors as defined in the Act, and all other employees. During the hearing, the Petitioner amended the petition to specify the unit described in the agreement.

The most recent agreement between the parties expired September 30, 2003. Following the expiration of that agreement, the parties engaged in numerous bargaining sessions, but were unable to agree to the terms of a successor agreement. In September 2004, the Employer implemented its final offer. Since then it has operated under amendments to the final offer.

It is well established that the bargaining unit in a decertification election must be coextensive with the recognized or certified bargaining unit. See, *Arrow Uniform Rental*, 300 NLRB 246, 247 (1990); *Campbell Soup Co.*, 111 NLRB 234 (1955). Since the unit in the petition, as amended, is coextensive with the contractual unit, I find that unit is an appropriate unit and I am directing an election in a unit of approximately 58 employees.

¹ The name of the Employer appears as amended at the hearing.

CONCLUSIONS AND FINDINGS

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.²
3. The Union claims to represent certain employees of the Employer.
4. The Union is a labor organization within the meaning of Section 2(5) of the Act.³
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and extra board drivers domiciled at the Employer's West Memphis, Arkansas terminal facility.

EXCLUDED: All office clerical employees, mechanics, casual and seasonal drivers, guards and supervisors as defined in the Act, and all other employees.

² During the year ending December 31, 2007, the Employer received gross revenues in excess of \$50,000 from its interstate operations.

³ Bachman's testimony establishes that the Employer has dealt with the Union for the purpose of resolving grievances and negotiating employees' wages, hours and working conditions.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the American Postal Workers Union, Memphis Area Local. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an

economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **February 12, 2008**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the

Agency website, www.nlr.gov,⁴ by mail, or by facsimile transmission at (901) 544-0008 or at (615) 736-7761. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

⁴ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by February 19, 2008. The request may be filed electronically through E-Gov on the Board's web site, www.nlr.gov,⁵ but may not be filed by facsimile.

DATED: February 5, 2008

/S/[Ronald K. Hooks]

Ronald K. Hooks, Regional Director
National Labor Relations Board
Region 26
80 Monroe Avenue - Suite 350
Memphis, TN 38103-2416

⁵ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.